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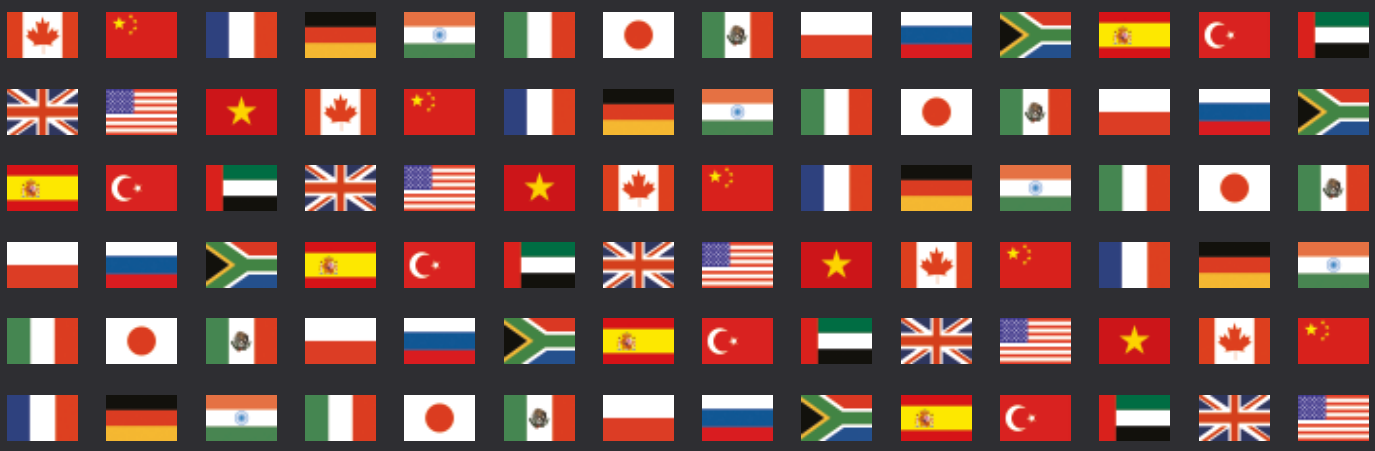

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First published 2017
Third edition
ISBN 978-1-83862-127-8

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Lexology Getting The Deal Through is delighted to publish the third edition of *Automotive*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Patrick Ayad and Lance Bultena of Hogan Lovells, the contributing editors, for their assistance in devising and editing this volume.

LEXOLOGY
Getting The Deal Through

London
June 2019

Japan

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OVERVIEW

Market

1 Describe the significance of, and developments in, the automotive industry in the market.

The automotive industry is one of the most important sectors in Japan. Although Japanese automotive manufacturers (OEMs) have been increasing localisation of their production, Japan manufactured over 8.3 million passenger vehicles (which is 1 million greater than the production in Germany and France combined), 1.37 million heavy-duty vehicles, and exported over 4.8 million automobiles in 2018. Japan also produced over 650,000 motorcycles, and 70 per cent were exported in the same period. The production amounts to over ¥21.5 trillion. These OEMs accompany the complex ecosystem of parts suppliers whose production amounts to ¥20.4 trillion in shipment value. OEMs and parts suppliers employ approximately 814,000 persons across Japan, and the workforce employed in the automobile-related sectors – including sales, transportation, service and maintenance, and electronics or other manufacturing industries – amounts to approximately 5.34 million persons, which is equal to 8.3 per cent of the Japan's working population. In 2017, Japan produced 9.69 million vehicles – 8.35 million were passenger vehicles and 1.35 million were buses and light or heavy trucks – and exported 4.7 million thereof. The export of automobiles and automobile parts amounted to ¥15.1 trillion, which is 21 per cent of the value of Japan's entire exports. The automotive industry in Japan is supported by ¥2.8 trillion of R&D investment (FY 2015) and ¥1.5 trillion of capital investment (FY 2016).

Japan is also the third largest automotive market in the world. In 2018, approximately 5.27 million vehicles were sold in Japan, of which 4.39 million were passenger vehicles and 0.88 million were buses and light or heavy trucks. Approximately 44 per cent of the passenger vehicles were Japanese *kei*-standard light vehicles (vehicles designed with limited dimension and equipped with no larger than a 660cc engine). Japan imported approximately 309,000 vehicles from non-Japanese manufacturers in 2018, approximately 63 per cent of which were German-branded vehicles. The number of registered passenger vehicles in 2018 was over 62 million, and 80 per cent of Japanese households have at least one vehicle.

Regulation

2 What is the regulatory framework for manufacture and distribution of automobiles and automobile parts, such as homologation process as well as vehicle registration and insurance requirements?

Automotive regulation is generally governed by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) and its related governmental entities such as the National Agency for Automobile and Land Transport Technology (NALTEC). Every automobile in Japan is required to comply with extensive safety and environmental standards, pass an inspection and be registered before being operated on public roads under the Road Transport Vehicle Act (RTVA) (Act No. 185 of 1951, as amended).

Type approval

Mass production automobiles need type approval before being launched to the market. Filings for type approval are reviewed from the perspectives of compliance with the Safety Standards and quality control measures. OEMs are required to file for the type approval pursuant to the Automobile Type Approval Guidelines (Automobile Type Approval Guidelines (Notification No. 185 of 1951 of the Vehicle and Component Approvals Division, Engineering and Safety Division, Road Transport Bureau at the Ministry of Land, Industry, Transport and Tourism (MLIT)) of the MLIT by applying for testing at the NALTEC, the agency that handles vehicle certification and homologation matters under the MLIT.

The Automobile Type Approval Guidelines comprise three frameworks:

- Type designation system (TDS): this is the standard type approval regime for most passenger vehicles, which includes inspections of sample vehicles and quality control systems to ensure uniform quality of the models. The OEMs are required to have their vehicles inspected by qualified staff members before shipping out of the factory pursuant to the Operation Guidelines for Vehicle Type Approval (Guidelines for Vehicle Type Approval (Notification No. 1252 of 1998 of the Road Transport Bureau Type Approval and Recall Division of the MLIT)). For imported cars, NALTEC dispatches its staff overseas to conduct sample inspections and examine data produced by overseas test institutions. The type designation approval will be granted generally within two months of applying.
- The OEM of type designated vehicles is required to ensure the quality of the vehicles and issue a 'completion inspection certificate' upon shipping out vehicles from the factory. As this is a Japan specific requirement, some importers have a receiving facility near the large cargo port. Owners of type designated vehicles are allowed to register their vehicle with the local MLIT Transport Branch Office by submitting the completion inspection certificate issued by the OEM and some simple paperwork.
- Type notification system (TNS): this regime is mainly used for heavy-duty vehicles (buses and trucks), of which one production model offers various specifications and derivative models. The TNS includes an inspection of sample vehicles and the uniformity of each product with the sample, while inspection of the quality control system is omitted.
- Preferential handling procedure for imported motor vehicles (PHP): this is a simplified system to promote the sales of imported cars and is applied to models imported in quantities of 5,000 or fewer per year. The procedure consists of the submission of documents and presentation of the actual vehicle to NALTEC. The data and specifications

submitted to the authority of other jurisdictions where the original type approval was granted can generally be used for the application of PHP, but an emissions test must be implemented anew under the Japanese standards. No sample inspection is required, but one in 50 vehicles is tested for emissions.

Automobiles that are not type approved can also be registered and operated on public roads, which is the case for parallel import vehicles and heavily customised vehicles produced in a small number. The owner is required to have the vehicle inspected to confirm compliance with the Safety Standards.

TDS scandals from 2017

Pre-shipping inspection under TDS must be conducted by the manufacturer's staff that have been internally qualified as inspection staff by passing certain internal screenings and must have been identified to the MLIT in advance. In September 2017, an on-site investigation by the MLIT discovered that an OEM's pre-shipping inspection certificates for completed vehicles had been signed by non-qualified staff. The OEM voluntarily stopped shipment of its products for two weeks. After the MLIT requested that other car manufacturers check their operations, an additional OEM was also found to have had the same non-compliance issues. In the course of investigation, it was discovered that both OEMs had not been complying with TDS (which requires inspection by qualified inspectors) for more than 30 years. Following the scandal, in November 2017 the MLIT established a commission to review the current TDS inspection regime. In April 2019, a third OEM was also found to have the same non-compliance issues that had continued for years. This series of scandals resulted in bitter criticism of OEMs by the market and cost billions of yen to conduct recalls to redo the completion inspections. However, some experts also point out that this TDS requirement is an outdated formality, and there is no equivalent inspection requirement for vehicles manufactured for export. As such, there may be some reform in the near future.

Mutual recognition

The UNECE World Forum for Harmonization of Vehicle Regulations held in November 2017 (WP29) adopted the International Whole Vehicle Type Approval (IWVTA) together with UN Regulation No. 0 (UNR0), which came into effect in 2018. Under the IWVTA, countries that ratify UNR0, including Japan and European countries, will reciprocally accept vehicle inspection certificates enabling effective and speedy vehicle approval as well as promotion of higher safety and environment standards. The MLIT has announced that it will take the lead in furtherance of UNR0 to developing countries in Asia.

Registration and periodic inspection

Automobiles are required to be registered before being operated on public roads. The registration procedure is handled by the local MLIT Transport Branch Office where a licence number plate is issued. As a prerequisite for the registration, vehicles need to comply with the Safety Standards. With regard to TDS-approved vehicles, manufacturers are allowed to inspect their own products before factory shipment, and an inspection of each vehicle at the registration centre is not required. On the other hand, the TNS and PHP processes require the presentation of each actual vehicle as part of the registration process, although inspections for these types of approved vehicles are more simplified than those without type approval. Automobiles without type approval (eg, those that are produced in very small quantities or imported by individual users) may also be registered and placed on public roads, but need to go through the full-scale inspection in advance. To register, the owner of a vehicle is also required to certify at the local police station that an appropriate parking area is secured for the vehicle. Any change in the registration details, such as the transfer of ownership, should be registered within 15 days. Three years from the first registration, vehicles need to be re-inspected at a designated service centre (and every two years thereafter) to ensure compliance with Safety Standards; this is commonly referred to as 'shaken'.

Insurance

Every driver is required to participate in the compulsory liability insurance scheme under the Automobile Liability Security Act (Act No. 97 of 1955, as amended), which automatically pays a specified amount to the victim of a traffic accident without identifying the person at fault or apportioning negligence between the parties involved. This is commonly referred to as '*jibaiseki*' insurance. The *jibaiseki* insurance provides minimal basic coverage with a cap of ¥1.2 million for injuries, ¥0.75 million to ¥40 million for permanent disability, and ¥30 million for death. It does not provide any compensation for damage to vehicles or other property. Thus, approximately 90 per cent of drivers also take out additional insurance, and the annual net premium in the auto insurance sector amounts to over ¥4 trillion.

Type approval of automobile parts

Automobile parts manufacturers are also entitled to take advantage of the separate automobile parts type approval regime pursuant to the RTVA. Once the model for a part is approved by NALTEC, the manufacturer is not required to undertake further inspections of the part regardless of the vehicle model into which the part is incorporated. Japan is also a party to United Nations-sponsored Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts signed in Geneva on 20 March 1958 (the 1958 Agreement), which provides technical prescriptions for wheeled vehicles, equipment, and parts that can be fitted or used on wheeled vehicles, and the conditions for reciprocal recognition of approvals is granted on the basis of these prescriptions. Japanese regulators have been increasingly promoting the harmonised standard and reciprocal recognition of approvals, and as of March 2019, Japan has adopted 77 categories of rules out of 149, including categories regarding brakes, safety belts and tyres.

Development, manufacture and supply

3 How do automotive companies operating in your country generally structure their development, manufacture and supply issues? What are the usual contractual arrangements?

The development, manufacturing, and supply of automobiles and auto parts involves close and long-term relationships between OEMs and suppliers. Such long-term relationships usually consist of a master agreement covering terms and conditions common to the entire transaction between the parties, and a relatively simple individual agreement or purchase order form is used to conclude each individual transaction. OEMs usually enter into supply agreements with auto parts manufacturers or other suppliers with respect to manufacturing. Supply agreements are also governed by regulations to protect 'weak' suppliers from unfair trade practices of 'strong' OEMs and high-tier suppliers (Act against Delay in Payment of Subcontract Proceeds, Etc to Subcontractors (Act No.120 of 1956, as amended)). Some generic parts and maintenance parts are handled not only by suppliers but also by Japanese 'trading houses', or companies specialised in import, export, distribution and marketing of goods.

Traditionally, Japanese OEMs have formed strong alliances with parts suppliers, called *keiretsu*, acting in close and exclusive cooperation 'in the same boat' with regard to the supply of parts and semi-processed components as well as research and development.

Keiretsu are hierarchical structures with the OEM at the top and several layers of suppliers broken down into Tier 1, Tier 2 and Tier 3 suppliers, securing a stable supply of high-quality components optimised to the OEM's end product. Some of these companies often have equity relationships; however, contractual relationships are more common and so are de facto continuous transactions without any specific written agreements. However, instead of the traditional keiretsu structure, car manufacturers are increasingly procuring parts from diversified suppliers because of increasing competition in the global market, complex supply chains, and the development of common architecture and modularisation. Therefore, the traditional keiretsu structure is said to be gradually dissolving. This means that suppliers newly participating in the market will have more business opportunities, while contracts with new suppliers that do not have a history of previous transactions will need closer review. Also, in this context, some OEMs and high-tier suppliers are insourcing their supply by means of acquisitions of other suppliers and emerging high-tech companies, resulting in increasing M&A demands.

Distribution

4 How are vehicles usually distributed? Are there any special rules for importers, distributors, dealers (including dealer networks) or other distribution partners? How do automotive companies normally resolve restructuring or termination issues with their distribution partners?

Vehicles are usually distributed through dealerships of distributors, some of which are subsidiaries of the OEM's group, and others are independent local companies. One dealership, even that of an independent local company, usually handles vehicles of only one OEM and does not mix vehicles from several OEMs in its product line-up. Generally, distributors purchase vehicles from the OEM pursuant to the OEM's standard terms and sell them to customers pursuant to the standard terms instructed by the OEM. OEMs provide extensive instructions regarding the service quality, promotions and incentives, and the use of trademark and signage. More often than not, vehicles are distributed on a built-to-order basis – vehicles are manufactured with customised options upon the purchase order by the customer – instead of being sold from the stock stored in the backyard of the dealership. Imported vehicles are generally sold from the dealer's stock.

There are no special regulatory requirements for importers, distributors, dealers or dealer networks for new vehicles. The importer of vehicles who obtained the type approval is identified as the OEM of such vehicles in Japan and is responsible for the purpose of a recall. Many dealerships provide financial arrangements for customers such as auto loans and leases (with or without a buy-back option), and OEMs usually have their own financing company and contract with credit companies to facilitate such financial arrangements. This area is heavily regulated by the Money Lending Business Act (Money Lending Business Act (Act No. 32 of 1983, as amended)) and the Instalment Sales Act (Instalment Sales Act (Act No. 159 of 1961, as amended)).

Contracts with distributors are governed by the Civil Code (Civil Code (Act No. 89 of 1896 as amended). There are no particular rules governing dealership or franchise. As the automotive industry is brand oriented and each OEM is keen to control the vertical channels for its automobiles, they pay close attention to dealership-related competition issues such as zoning of dealership, restrictions on methods of sale, and selective distribution. For example, abuse of dominant bargaining power such as the exercise of excessive control or undue influence is prohibited under the Antitrust Act and the government guidelines (Guidelines Concerning Distribution Systems and Business Practices (JFTC, 11 July 1991, as amended)). Since vehicles must be inspected every two years, many dealers provide qualified vehicle mechanic services to enhance customer loyalty and to market new cars. Vehicle maintenance services require certain physical facilities and qualified staff, as well as regulatory certifications by a local MLIT Transport Bureau. Also, to trade in second-hand vehicles a second-hand dealer licence is required.

Restructuring of dealerships can be achieved through the termination, amendment, transfer or assignment of the dealer contract. Under the general principle of the Civil Code, when termination of a dealer agreement is disputed, the court generally tends to favour the continuation of the existing agreement, to provide support for the 'weak' distributor against the 'large' OEM. If the contractual relationship between a car manufacturer and a dealer has continued for a protracted period, it may be difficult for the car manufacturer to terminate the contract easily, even if there is a right to terminate in the contract. In other words, the Japanese courts sometimes do not interpret the contract at face value but require the terminating party to have a justifiable reason for wanting to terminate the contract. There are some judicial precedents where a contractor (dealer) of a car importer challenged the validity of the termination of the dealer contract by the importer owing to a poor sales record and the dealer's non-compliance with the importer's business strategy. To minimise this risk, manufacturers may prefer to enter into fixed-term contractual arrangements with dealers without automatic renewal, and instead review the relationship every year. Even where unilateral termination right exists, a car manufacturer still might attempt to have the dealer agreed to voluntarily terminate the contract to minimise the risk of future disputes.

Other main concerns, specific to these kinds of transactions, include competition issues, the provision of maintenance services, warranties, and auto loans and lien arrangements with customers. Although there are no special requirements in the restructuring of dealerships in the automotive industry as compared to other industries, restructuring is always a tough challenge owing to the above-mentioned principle protecting long-term relationships and the significant impact on both the distributor and the OEM. In April 2017, an OEM announced a major restructuring of its 2,100 dealers across Japan, which is expected to finish in FY2020. Similarly, in November 2018, another OEM, in the course of a major restructuring of its dealer network, announced a sweeping sales channel reform. This will involve a merger of dealers in Tokyo directly held by the OEM in April 2019. The OEM has approximately 280 partner distributors with 5,000 stores across Japan, which are currently classified into four channels that sell different combinations of branded vehicles. Many of these partner distributors are local businesses with no equity relationship with the OEM group. The OEM has announced that it will integrate these four channels and reduce its product line-up from 40 to approximately 30 models effective from 2022 to 2025. Also, a third OEM announced a merger of its two 100 per cent affiliated distributors in February 2019.

Mergers, acquisitions and joint ventures

5 Are there any particularities for M&A or JV transactions that companies should consider when preparing, negotiating or entering into a deal in the automotive industry?

However, given the complex and highly regulated nature of the industry, key features in terms of the due diligence and drafting of relevant agreements include regulatory compliance, employment, competition, and intellectual property issues.

Regulatory compliance is a key concern in M&A and JV transactions in the automotive industry today. After the series of scandals, the regulator is keen to ensure compliance by exercising its supervising authority and brand and market reputation are the most vulnerable assets even for well-established companies with decades of tradition.

Although the rate of employees who are unionised has been drastically decreasing in the past decade, the traditional style labour

unions still have a certain level of presence in the automotive industry (see section 13). Under the labour-management harmonising style in Japan, although strikes and aggressive negotiations are rare, in some companies, the cooperation of the union is indispensable for the smooth closing of an M&A deal and the subsequent post-merger integration.

Competition issues are also important. Under the Japanese merger control regulation, the merger and acquisition of companies exceeding certain thresholds requires prior filing with the JFTC and may not be closed within a 30-day waiting period, which can be shortened upon request from the parties.

A notable recent trend is M&A involving companies outside of the traditional automotive industry, such as carbon fibre, image sensor, laser radar, next generation battery, and automated drive technologies. This trend is supported by the dissolution of the keiretsu regime and divergence in the automotive industry itself.

Incentives and barriers to entry

6 Are there any incentives for investment in the automotive market? Are there barriers to entry into the market? What impact may new entrants into the market have on incumbents?

There are no special incentives for investment in the automotive market. Government branches, including the Small and Medium Enterprise Agency, have been providing financial aid to ventures and small-scale enterprises with innovative business models, and some municipalities offer financial aid and tax reductions through by-laws to attract investment in factories and regional business hubs. These benefits are also applicable to the automotive industry.

The Ministry of Economy, Trade and Industry (METI), through the Next Generation Vehicle Promotion Centre provides financial aid for the purchase of plug-in hybrid vehicles, electric vehicles (EVs) and fuel-cell vehicles (FCVs), depending on the energy efficiency of the vehicle as well as the investment in EV charging facilities and hydrogen stations for FCV, and some municipalities have similar arrangements. As a result, for example, FCVs can receive a governmental incentives of over ¥3 million (¥2 million from the METI and ¥1 million from Tokyo Metropolitan government).

There are no special legal barriers to foreign companies entering the automotive industry. The safety and environmental standards are increasingly conforming to those of other jurisdictions. However, the type approval process and regulations on environment and safety standards are prepared only in Japanese, and the procedures are quite complicated which may represent short-term practical barriers to entering the market. Also, there are established common market practices and standards. Thus, it is advisable for new market participants to consult appropriate experts.

The traditional manufacturing and distribution sectors have many powerful incumbent players in Japan. Therefore, the impact of new entrants will not likely be significant. However, at the dawn of new technologies such as autonomous vehicles, connected vehicles and ride sharing, entrants from other industries could be game changers.

PRODUCT SAFETY AND LIABILITY

Safety and environmental

7 What are the most relevant automotive-related product compliance safety and environmental regulations, and how are they enforced? Are there specific rules for product recalls?

The RTVA is the fundamental statutory source of product compliance, safety and environment regulations. The RTVA requires every vehicle to achieve the Safety Standards as a condition of registration for driving on public roads (see question 2). Guidelines prepared by the MLIT provide detailed numerical standards for each component of the vehicle as well as the testing methodology. Driving a non-conforming automobile may result in administrative and criminal charges. In addition to these standards, the National Agency for Automotive Safety and Victims' Aid conducts automobile assessments (JNCAP) to protect consumers and improve safety technologies, and publishes the results of the assessments, including crash testing and pre-crash safety assessment.

Environmental standards

Fuel economy

The standards for fuel economy are regulated by the Act on the Rational Use of Energy (the Energy Saving Act). This Act has provided the unique 'top runner programme' fuel economy standards since 1998, which takes the fuel consumption of the most fuel-efficient vehicle in the segment currently in the market, and sets that consumption level as the standard for the next generation of vehicles. The standard requires OEMs to keep the average fuel consumption of their products below the standard established by the MLIT and METI for a certain period depending on vehicle weight. Underachievement is publicly announced. The most recent standard was announced on 29 March 2019 with 2025 as the target year.

In addition to the 'top runner programme', the MLIT will introduce the 'corporate average fuel efficiency' (CAFE) regime where OEMs are required to keep the CAFE value, which is calculated through the weighted average of fuel economy achievement in each category of vehicle weight, above the CAFE standards calculated through the weighted average of fuel economy standard in each category of vehicle weight.

The weight, type of engine, fuel consumption (in four testing modes: WTLP, urban, suburban and motorway) and other specifications are required to be stated in the catalogue for each vehicle. Vehicle owners are entitled to receive preferential tax treatment and incentives depending on the achievement of standards by their vehicles; however, vehicles that do not comply with the standards are not prohibited from being driven.

The testing method for compliance with environmental standards for passenger vehicles is the Worldwide-harmonised Light Vehicles Test Procedure, which replaced the previous 'JC08' mode from October 2018 onwards, applicable to vehicles with a weight of less than 3.5 tons. The test consists of several driving cycles representing real-world vehicle operations on urban and suburban roads and motorways. Although the fuel consumption tested under the WLTC usually indicates a lower score than that tested under the JC08 procedure, some manufacturers have already started to indicate fuel consumption of their vehicles in the WLTC mode.

Fuel consumption was not traditionally regulated by the RTVA, but after a series of worldwide fuel consumption scandals, the MLIT included fuel consumption under the prescribed testing methods in the Safety Standards, and the type approval can be revoked if the OEM falsifies the fuel consumption. False or misleading statements regarding emissions may also trigger enforcement under advertisement regulations including administrative surcharges of up to 3 per cent of the relevant sales. In 2017, the Consumer Affairs Agency imposed an administrative surcharge of ¥480 million on an OEM for false representation of fuel consumption in its advertisement materials. The Consumer Affairs Agency also imposed an administrative surcharge of ¥3.17 million on another OEM for selling the OEM-badged version of virtually the same model procured from a different OEM; however, interestingly, the OEM later challenged this enforcement and was successful in having it overruled in December 2018.

Emissions

The regulation of emissions consists of three components.

- Individual regulation: this applies only once when the new vehicle is registered, and regulates CO, non-methane hydrocarbon, NOx and particulate matter (PM), based on the RTVA and the Safety Standards. With regard to heavy-duty vehicles, the Safety Standards have incorporated the worldwide harmonised heavy duty certification procedure and off-cycle emission testing, which from 1 October 2016 are gradually being applied to each class.
- Vehicle type regulation: this applies to vehicles with diesel engines and prohibits the operation of underachieving vehicles in designated zones to prevent diesel air pollution in metropolitan areas pursuant to the Amendment Act on the Reduction of the Total Amount of Nitrogen Dioxide and Particulate Matter Originating from Automobiles in Designated Areas (Act No. 70 of 1992 as amended, the PM/NOx Act).
- Traffic regulations: some local governments respectively provide emission control rules. For example, Tokyo and three surrounding prefectures have by-laws restricting diesel vehicle PMs under stricter standards than the above-mentioned regulations.

After the emissions scandal in 2015, the MLIT and the Ministry of Environment conducted a series of real-world driving emission tests for eight models with diesel engines via a portable emission measurement system (PEMS) and published the results; however, the MLIT has decided not to impose mandatory testing via PEMS for all vehicles because of difficulties in homogenising test conditions to account for variations in weather and traffic.

Recycling

End-of-life automobiles are mandatorily recycled pursuant to the Act on Recycling of End-of-Life Vehicles (Act No. 87 of 2002 as amended (the Automobile Recycling Act)). Vehicle owners pay a recycling fee when purchasing a new vehicle and the fee is pooled by the Japan Automobile Recycling Promotion Centre (JARC), as designated by the government. The scrapping work is conducted by a wrecker registered with a relevant local authority, and the manufacturer and importer are required to take over and destroy or recycle the shredder dust, airbags and chlorofluorocarbons using funding from JARC. A breach of recycling procedures, such as scrapping by an unauthorised wrecker; failure to collect airbags, batteries, waste oil and fluid; wrecking without sorting hazardous materials; and unauthorised export of automobile wreckage, may result in criminal liability. (Waste Management and Public Cleansing Act (Act No. 137 of 1970, as amended, Customs Act (Act No. 61 of 1954, as amended, Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949, as amended).

Recall of automobiles

Recalls of automobiles are governed by the RTVA and are separate from the general rules of recall for other consumer products. Manufacturers and importers of vehicles with type approval must conduct recalls pursuant to an order of the MLIT or on a voluntary basis. In many cases, the manufacturers choose to conduct a voluntary recall rather than waiting to receive an administrative order.

Based on the Automobile Type Approval Guidelines and Guidelines for the Notification of Recalls (Ordinance No. 96 of 1994 of the Vehicle and Component Approvals Division, Engineering and Safety Division, Road Transport Bureau, the MLIT), manufacturers or importers are required (in principle) to specify the cause of a defect and the solution, as well as the scope of the targeted vehicles, in a report to the MLIT. They must also notify the MLIT, in the format provided by the MLIT, with an explanation of the defect, the solution, specifications, a photograph of the target vehicle and a recall summary in English. Also, manufacturers need to make the recall public by notifying users by mail or in person, and publish the fact in the gazette of the Japan Automobile Service Promotion Association. Information about a recall is also publicly available on the MLIT website.

Once a manufacturer makes a notification of a recall, it is required to immediately implement the recall work. A breach of these regulations may result in up to one year's imprisonment and a ¥200 million fine.

Recall of automobile parts

With regard to defective automobile parts, the defect should be dealt with by way of a recall of the entire vehicle by the car manufacturer, except for two categories of parts.

As exceptions, tyres and child safety seats are subject to an independent recall procedure pursuant to the Order for Enforcement Regulations for RTVA (Ordinance No. 185 of 1 June 1951) and parts manufacturers are to carry out the recall process rather than the car manufacturer.

Technically, car manufacturers can claim compensation for loss or damage incurred as a result of conducting a recall due to defective parts from a supplier. However, this type of litigation has historically been relatively rare in the *keiretsu* structure. Therefore, it was surprising to many in Japan when a Japanese car manufacturer sued one of its major tier 1 suppliers in 2014 claiming more than ¥15.6 billion as compensation for damage incurred as a result of a recall caused by a defective power steering device produced by the parts manufacturer.

Product liability and recall

8 Describe the significance of product liability law, and any key issues specifically relevant to the automotive industry. How relevant are class actions or other consumer litigation in product liability, product recall cases, or other contexts relating to the automotive industry?

Product liability is an important subject in the automotive industry. Customers who incurred losses owing to the vehicle may bring claims against the OEM and the dealer based on a tort or warranty theory under the Civil Code. In the tort claim under the Civil Code, coupled with the Product Liability Act , if the product has a defect, or lacks the level of safety that the product ordinarily should have, and if such a defect has caused damage to the life, body or property of others, then the manufacturer or importer shall be liable for such damage. This regime imposes strict liability, regardless of whether the manufacturer or the importer has been negligent; however, where the defect could not have been discovered given the state of scientific or technical knowledge at the time of delivery, the manufacturer would not be liable for the defect. Dealers, rent-a-car companies, repair service providers, and suppliers of parts are not subject to strict liability and may be held liable only when they have been found to have been negligent. The judgement is solely made by the judge (or a board of three judges and in cases of severe criminal offence, a board of three judges and six citizen judges). There is no jury trial in the Japanese litigation system. The parties to the case as well as the court may request expert witnesses to testify or produce documents regarding the analysis of issues in the case, but the judge is not bound by the expert's opinion. The plaintiff may claim actual damages, as well as consequential or incidental damages attributable to the defect or negligence; however, the court does not grant punitive damages, and an award for punitive damages in other jurisdictions is not enforceable in Japan. Overall, however, product liability claims for a defective vehicle or a recall are relatively rare.

Since 1 October 2016, a new 'class action'-like regime has been introduced in Japan (Special Provisions for the Civil Procedure for Collective Recovery of Loss of Assets of Consumers (Act No. 96 of 2013)). This class action-like regime is two-tiered. At Tier 1, a qualified consumer organisation must prove that the relevant manufacturer owes common

liability to a number of consumers. Then, at Tier 2, each consumer can have a consumer organisation file its claim with the summary court. The Tier 1 action may only be taken by a qualified consumer organisation (QCO) which has received the required designation to act from the prime minister pursuant to the Consumer Contract Act Consumer Contract Act (Act No. 61 of 2000, as amended). As at March 2019, there were only three QCOs (out of a total of 19 QCOs in Japan) which had designation from the prime minister.

This class action-like regime does not cover strict product liability. Furthermore, it only entitles the recovery of actual losses and specific performance and does not extend to an indemnity for any consequential losses, loss of profits, injury or bodily harm. The action can only be made against a defendant who has direct privity of contract with consumers – not against third-party car manufacturers, importers or parts suppliers. Thus, this class action-like regime has limited application, and it does not significantly impact the automotive industry in Japan.

DISPUTES

Competition enforcement

9 What competition and antitrust issues are specific to, or particularly relevant for, the automotive industry? Is follow-on litigation significant in competition cases?

Antitrust enforcement

Antitrust measures are enforced by the Japan Fair Trade Commission (JFTC) based on the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Antitrust Act) Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947 as amended, the Antitrust Act). Traditionally, the JFTC has been active in the automobile parts sector in terms of enforcement against cartel activities. The JFTC undertook major enforcement actions against cartels in this industry during 2012 and 2013 – comprising antitrust surcharges of nearly ¥12.9 billion against four major wire harness manufacturers in 2012, nearly ¥3.4 billion against seven electrical component manufacturers, and nearly ¥4.7 billion against three headlamp manufacturers.

In recent years, however, the JFTC has not implemented aggressive enforcement. The JFTC issued only 13 cease-and-desist orders in FY 2017, imposing aggregate surcharges of approximately ¥1.89 billion, and 11 orders in FY 2016 imposing aggregate surcharges of approximately ¥9.16 billion.

The rate of surcharges is up to 10 per cent of sales in the event of a cartel for large-scale manufacturing companies. Companies can take advantage of leniency by voluntarily reporting the violation to the JFTC, and the first reporter before initiation of the JFTC's investigation may receive a 100 per cent reduction in the surcharges. In practice, many cases are closed without formal cease-and-desist orders or surcharges. Companies subjected to the JFTC's investigation are entitled to hearings at the JFTC.

However, as the automotive industry is becoming increasingly competitive and is facing the rise of game-changing new technologies, manufactures are becoming keen to participate in joint development and joint procurement of new technologies (electric vehicles; next generation batteries, radars and sensors; etc), horizontally with their competitors in the market as well as vertically with suppliers and parts manufactures. This trend will inevitably increase tension with antitrust regulations, and participants in the market should be aware of the antitrust risk when developing new business models.

Brand owners are becoming more conscious of the brand strategy of increasing control of dealerships to develop a more effective distributorship network and redefining their brand image. It may be worth pointing out that Japanese competition regulations provide extensive rules against unfair trade practices and abuse of superior bargaining power, and in this context, brand owners should be aware of the risk that heightened control over dealership and service providers may give rise to competition law concerns.

Follow-on litigation

There could be three types of follow-on litigation in competition cases: (i) litigation against the JFTC; (ii) civil litigation raised by a party who has incurred damage; and (iii) a derivative suit by shareholders against the directors of a company that has participated in cartel activities.

Litigation against the JFTC

A company that is subject to a JFTC enforcement action may challenge the same in court. This type of litigation is relatively rare but includes large-scale disputes involving important Antitrust Act issues.

Civil liability to affected parties

Private parties affected by a violation of the Antitrust Act such as consumers, suppliers, distributors and competitors can bring a civil action for damages and an injunction against the company that allegedly committed the violation. A company that has been subjected to enforcement by the JFTC as having been involved in cartel activities could have civil liability for damages incurred by customers and end users, and once enforced by the JFTC, the company may not raise a defence that they had no wilful misconduct or negligence. This type of litigation can be used not only in a protective manner, but also in an aggressive manner to attack unfair trade practices or abuses of superior bargaining power of vendors, customers or competitors.

Director's liability

Directors of a company that has participated in cartel activities might be sued by shareholders of the company by way of a derivative suit. In the above-mentioned wire harness cartel case, the shareholders of a related company sued its 22 directors in a derivative suit for negligence based on the participation in the cartel and, in particular, the failure to apply for leniency by cooperating with the JFTC. This case was finally settled with the payment of ¥520 million by the directors to the company in 2014.

Dispute resolution mechanisms

10 What kind of disputes have been experienced in the automotive industry, and how are they usually resolved? Are there any quick solutions along the supply chain available?

There is no specific type of dispute especially significant to the automobile industry. Automotive industry companies should be prepared for contractual disputes with customers or suppliers, product liability and consumer issues, and intellectual property issues (including disputes). Typical types of disputes may involve: termination of the supply or distribution agreement; product liability; and misleading advertisement and employment issues. However, automotive related disputes are relatively rare in Japan as compared to other jurisdictions. Disputes between domestic companies that have not been successfully resolved through negotiation are usually submitted to the courts for litigation, while large-scale international cases are submitted for arbitration. Japanese courts tend to resolve disputes by in-court settlement. The court often grants interim injunctions based on a statute, especially when not doing so may make it impossible or extremely difficult for a party to exercise his or her rights.

Distressed suppliers

11 What is the process for dealing with distressed suppliers in the automotive industry?

To ensure a continued supply of parts, automotive manufacturers tend to have two choices: (i) finding an alternative supplier; or (ii) assisting the distressed supplier to continue its operations. As disruption of a supplier's business may potentially cause substantial impact in the ecosystem of the automotive industry, OEMs and suppliers sometimes support distressed suppliers to mitigate the systemic risk. Banks are another key player that can exercise initiative and consultancy in the course of dealing with a distressed supplier under the Japanese traditional 'main bank' regime. M&A in this context is also common.

The distressed suppliers may go into legal insolvency procedures including: (i) a bankruptcy procedure Bankruptcy Act (Act No. 75 of 2004, as amended); (ii) a civil rehabilitation procedure Civil Rehabilitation Act (Act No. 225 of 1999, as amended); (iii) a corporate reorganisation procedure Corporate Reorganisation Act (Act No. 154 of 2002, as amended); and (iv) a special liquidation procedure (Companies Act (Act No. 86 of 2005, as amended)). Among those, the bankruptcy and the special liquidation procedures are classified as liquidation-type processes, while the civil rehabilitation and the corporate reorganisation procedures are recovery-type processes where the focus is on preserving the business as a going concern. Companies seeking restructuring tend to choose civil rehabilitation procedures where the existing management can keep control of the company as a debtor-in-possession (DIP). The management of the distressed company may ask for assistance from banks, vendors and customers to rebuild the distressed business, or transfer the intact part of its business to a competitor in order to raise the liquidity available to inject in the distressed business. In cases where the distressed company has made an early decision to initiate restructuring, a pre-packaged bankruptcy strategy is often used to mitigate the impact. On the other hand, the use of non-DIP style corporate reorganisation procedure is limited to a small number of bankruptcies of large-scale or listed companies.

After an airbag defect scandal, one supplier filed an application for the civil rehabilitation process with the Tokyo District Court in June 2017, and its 14 affiliate companies around the world filed similar insolvency procedures in their respective jurisdictions. This civil rehabilitation process became the largest insolvency procedure of the manufacturing industry in the post-war era in terms of its debt amount of ¥1.082 billion. Pursuant to the civil rehabilitation plan submitted to the court in February 2018, the supplier transferred its assets, including its intact seatbelt and child safety seat business, to a Chinese-owned US company in the same industry in April 2018, and distributed compensation to its creditors, which appears to cover only ¥500,000 and 1 per cent of any amount exceeding ¥500,000 for each creditor. Car manufacturers were exempt from this settlement and will be compensated at a later stage from the rest of the fund after repayment to non-car manufacturer debtors, which will not cover a significant percentage of the aggregate debt amount. Despite the impact of the scandal, no bankruptcy owing to the supplier's issues had been reported. This is because the supplier had been continuing to make payments to its suppliers based on the existing contractual conditions, which is allowed under the Civil Rehabilitation Act. Affected suppliers may take advantage of the 'safety net guarantee' by the Small and Medium Enterprise Agency of METI under the Small and Medium-sized Enterprise Credit Insurance Act (Small and Medium-sized Enterprise Credit Insurance Act (Act No. 264 of 1950, as amended)), as well as the 'safety net loan' from the Japan Finance Corporation, a Japanese government-affiliated financial institution, both of which are designed to minimise systemic risk or domino effects on the whole industry.

Another route for distressed suppliers is Business Rehabilitation ADR. On 30 January 2019, Akebono Brake filed an application for Business Rehabilitation ADR with the Japanese Association of Turnaround Professionals (the Japanese Association of Turnaround Professionals is the only Specified Certified Dispute Resolution Business Operator as of March 2019). In this regime, the debtor, with the involvement of a Specified Certified Dispute Resolution Business Operator under the Act on Promotion of Use of Alternative Dispute Resolution (Alternative Dispute Resolution (Act No. 151 of 2004, as amended)) and the Act on Strengthening Industrial Competitiveness (the Act on Strengthening Industrial Competitiveness (Act No. 98 of 2013, as amended)), requests that financial institutions allow the rescheduling of loan payments and that the financial institutions not file for insolvency procedures. If the rehabilitation plan is approved by a unanimous vote of the financial institutions that are creditors, the loan arrangement is collectively modified in accordance with the rehabilitation plan. Business Rehabilitation ADR only covers debts to financial institutions, and does not affect transactions with other parties including suppliers, distributors and customers. This regime is designed to combine the advantages of private rehabilitation such as flexibility, speediness, confidentiality and preservation of the going concern value of the distressed company, with the fairness and stability of the statutory procedures.

Intellectual property disputes

12 Are intellectual property disputes significant in the automotive industry? If so, how effectively is industrial intellectual property protected? Are intellectual property disputes easily resolved?

The automobile industry is one of the most intellectual property-oriented sectors. Three of the top 10 companies that were granted the most patents in Japan in 2018 were automobile-related companies and many more companies with automobile parts divisions are listed in the top 100. Therefore, IP-related disputes could potentially be significant in the automotive industry.

However, intellectual property disputes are actually rare in the Japanese automotive industry. OEMs and parts suppliers tend not to resort to aggressive measures even if they suspect infringement of their intellectual property. This is in part because the intellectual property divisions in the automotive industry are like a small society, and it is often more profitable to cooperate, instead of dispute, typically through a cross-licence agreement. In addition, an increasingly common strategy for OEMs is to to disclose, instead of monopolise, core intellectual property such as hybrid vehicles and FCVs, in view of leading the technology trends.

Other reasons may include the fact that IP litigation is usually costly and lengthy, and the expected recovery awarded by the court does not cover the cost. In 2015, the average timeline for all types of IP litigation was 14.2 months, with an average of eight hearings held at the court. About half of the cases are settled without the court issuing any judgment. Given this, intellectual property disputes are not easily resolved.

EMPLOYMENT ISSUES

Trade unions and work councils

13 Are there specific employment issues that automotive companies should be aware of, such as with trade unions and works councils?

Although the automotive industry has long outgrown the traditional labour-intensive industry, employment is still a critical issue in the automotive industry. There remains a hard-working culture in some Japanese companies, especially in the countryside where many manufacturing

facilities are located, and this may cause employment issues such as overwork, harassment and non-compliance with regulations. The major sources of employment law include the Labour Standards Act (Labour Standards Act (Act No. 49 of 1947, as amended)), the Labour Contracts Act (Labour Contracts Act (Act No. 128 of 2007, as amended)) and the Industrial Safety and Health Act (Labour Standards Act (Act No. 49 of 1947, as amended), Industrial Safety and Health Act (Act No. 57 of 1972, as amended). In the course of the government-led work style reform initiatives, a package of regulatory updates came into effect from 1 April 2019, which set shortened overtime limitations and mandatory paid leave requirements.

Japanese employment law provides extensive protection for employees against termination and salary cuts, and it is extremely difficult to terminate employees even for redundancy or underperformance. Many OEMs and suppliers therefore use temporary staff and dispatched workers to procure a workforce with flexibility to deal with the volatile market demands. This area of employment law is heavily regulated, and employers should be aware of the detailed regulatory requirements. For example, if an employer hires a fixed-term employee for an aggregate period of over five years, the employee is entitled to indefinite employment under the same conditions (the employer may reset the aggregate periods by placing a six-month non-hired period in between). A survey by the Labour Standards Bureau of the Ministry of Health, Labour and Welfare revealed in December 2017 that 7 out of 10 major OEMs in Japan have limited the term of fixed-term employees to avoid lapsing into indefinite employment. At the same time, as Japan is facing population decline or a shortage of workers, it is crucial to secure competent employees without incurring inadvertent future risks.

One characteristic of the employment environment in the automotive industry is the labour union. Many OEMs and auto parts suppliers have active labour unions, and the industry-wide Confederation of Japan Automobile Workers' Unions (JAW) purportedly has 779,000 members as of March 2018. While the unionisation rate is drastically decreasing across all industry sectors (17 per cent on industry average in 2018), JAW maintains a relatively high unionisation ratio. This is supported by a union shop arrangement, or a type of collective bargaining agreement between an employer and a labour union under which the employer will ensure that all employees belong to the labour union and fire those who do not wish to join any union (the Labour Union Act (Act No. 174 of 1949, as amended)). The unions negotiate the following year's salary review every spring, which is referred to as *shunto*, or 'spring labour offensive', but strikes and serious labour disputes have been relatively rare in recent years under the Japanese collective bargaining culture described as 'labour-management harmonisation'.

Prime Minister Abe and the 'conservative' government party have been promoting a campaign to raise wages to boost the economy and have requested that major automotive companies increase wages, while the Japan Business Federation, also known as *keidanren* – an association composed of the management of major companies and industry associations, has been reluctant to take on major salary reform.

NEW TECHNOLOGIES

Legal developments

14 What are the most important legal developments relating to automotive technological and mobility advances?

Automated or autonomous cars

The Japanese government has established a roadmap for the introduction of automated driving in Japan. The roadmap has defined the five automated driving levels in Japan, with fully autonomous driving at level-5. The roadmap also addresses the steps required for the implementation of automated driving levels from 2 to 5, with a goal to realise the operation of autonomous vehicles on public roads. In accordance with the previous discussion, the government issued the Outline of the Legal Framework Preparation for Automated Drive in April 2018, setting out necessary regulatory updates and potential legal issues posed by automated vehicles.

According to the MLIT, level-2 and level-3 automated vehicles may be driven on public roads without any infringement of regulations, provided there is a driver inside the vehicle who can take immediate control of the steering wheel, brakes and other equipment. In fact, many car manufacturers have launched level-2 and limited level-3 automated vehicles in the market. The MLIT has set standards for the limited use of level-3 automated vehicles under the following conditions: when the driver loses steering control, the driver must be warned within 15 seconds and the automated drive must be switched off within 65 seconds; in an emergency, automated drive must be overridden by the driver by giving a certain level of torque to the steering wheel; and automated parking must be at the speed of 10km/h or less. The JNCAP has included pre-crash braking systems and lane keep assist systems in the list of test items from 2014.

From 2017, insurance companies are offering a discount of up to 10 per cent on the insurance premium for vehicles equipped with advanced safety technologies including pre-crash brakes.

Requirements

The MLIT further expects full-fledged level-3 automated driving around 2020. To this end, the MLIT issued Guidelines for the Safety Technologies of Automated Vehicles in September 2018. These guidelines, although not legally binding, set out 10 elements to ensure the safety of automated driving:

- setting of ODD;
- safety of the automated driving system;
- compliance with the Safety Standards;
- human-machine interface;
- data logging;
- cybersecurity;
- emergency measures for the autonomous transportation system;
- safety evaluation;
- in-use improvement; and
- provision of information to the user.

These guidelines are designed to be interim standards for the development of automated vehicles until legally binding standards are established. The Road Traffic Act (RTA) sets the obligation of safe driving upon the driver, and the MLIT maintains the concept that the driver should be responsible for driving, and any resulting accidents, even during level-3 automated driving.

Level 4 is still under debate owing to the Convention on Road Traffic (Geneva, 1949) and the Road Traffic Act (Act No. 105 of 1960, as amended) Road Transport Act (Act No. 183 of 1951, as amended (RTA)), both of which assume the existence of a driver on board. However, the MLIT announced an amendment to the Safety Standards enabling experimental operations of a 'level 4' autonomous vehicle without a steering wheel, or acceleration and brake pedals on a public road under certain conditions including the time, weather, speed limit, route of operation, emergency kill switch and safety staff.

Experiments on public roads

The MLIT requires no special approval for the experimentation of automated vehicles on public roads as long as it satisfies the Safety Standards and has a driver in the vehicle. The MLIT may also grant special permission for vehicles that do not comply with the Safety Standards to enable experiments on public roads. In both cases the testing must comply with the specific guidelines issued by the National

Police Agency in May 2016. A number of exceptional permissions for testing have been granted, for example:

- in January 2019, as part of a series of experiments continued since 2018, the MLIT and METI jointly conducted an experiment for automated truck platooning using Cooperative Adaptive Cruise Control that will enable autonomous driving in platooning trucks on the motorway. The MLIT and METI are contemplating commercial service in 2020. One impetus for this programme is Japan's ageing society and workforce shortage;
- an IT venture company and a major taxi operator conducted a series of experiments with autonomous taxis (with a security attendant in the driver's seat) and provided services to passengers on public roads in the urban area of Tokyo;
- the prefectural government of Aichi tested an autonomous vehicle on public roads in a suburban area in December 2017; and
- an OEM and an IT venture jointly conducted a series of experiments of autonomous taxis (with a security attendant in the driver's seat) and provided services to passengers on public roads in the urban area of Yokohama.

The JNCAP has included pre-crash braking systems and lane keep assist systems in the list of test items from 2014. From 2017, insurance companies are offering a discount of up to 10 per cent on the insurance premium for vehicles equipped with advanced safety technologies, including pre-crash brakes.

Expected legislation

The government is also preparing for necessary legislative reform. The MLIT announced on 8 March 2019 that the cabinet approved an amendment to the RTVA, which will be passed by the parliament and come into effect in 2020. This amendment includes requirements for Safety Standards as well as maintenance and wireless updates of automated driving systems.

In December 2018, the National Police Agency announced the draft of an amendment to the RTA (Road Traffic Act (Act No. 105 of 1960, as amended)) to allow the use of a mobile phone in level 3 autonomous driving. The amendment will also require that vehicles maintain a log of automated driving and that the driver submit the log to the police under certain circumstances.

The legislative reform also extends to the civil liability of the driver. Under the Automobile Liability Security Act (see above), the primary liability for losses caused by a traffic accident is assigned to the operator of the vehicle (eg, the owner of the vehicle or the business owner of a transportation service – not necessarily the driver). The burden of proof (to disprove negligence) in an accident is shifted to the operator, and the operator will be held liable for damages caused by the accident unless the operator successfully proves: that the operator exercised due care; the victim or a third-party was at fault; and the vehicle did not have any defect. The MILT working group confirmed on 20 March 2019 that this framework will be maintained for autonomous vehicles.

Connected vehicles

OEMs and suppliers should note that advanced equipment for connected vehicles may be subject to additional regulations. Namely, radio devices and wireless communication are as regulated as automobiles. For example, the available bandwidths and requirements for the use of radio devices are regulated by the Radio Act (Radio Act (Act No. 131 of 1950, as amended)), and on-board communication services for automobiles may trigger filing obligations with the Ministry of Internal Affairs and Communications under the Telecommunication Business Act (Telecommunication Business Act (Act No. 86 of 1984 as amended)).

The amendment to the RTVA will require that online updates of automated driving programmes be approved by the NALTEC in advance.

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The use of big data will raise concerns regarding personal information protection.

Hybrid, plug-in hybrid, EVs and FCVs

The strategy for low- and zero-emission vehicles varies depending on the car manufacturer. Hybrid vehicles are commonplace today and are also increasing in popularity for heavy-duty vehicles. METI has been promoting plug-in hybrid, electric and fuel cell vehicles by offering financial aid for the acquisition of such clean energy vehicles and the establishment of battery chargers and hydrogen stations. The Tokyo Metropolitan Bureau of Transportation and Keihin Kyuko Bus have placed fuel cell busses on regular service.

On 22 March 2016, the Agency for Natural Resources and Energy under the METI revised its roadmap for the promotion of the FCV strategy, which was first published in June 2014. According to this ambitious roadmap, the agency is aiming to increase the number of fuel cell vehicles to approximately 40,000 by 2020, and to 800,000 by 2030, and increase the number of hydrogen stations to approximately 160 by 2020, and up to 320 by 2025.

Also, the Safety Standards are constantly being updated to accommodate the requirements for these clean automobiles, including in relation to batteries, high-voltage cables, fuel cells and hydrogen tanks.

Car or ride sharing

Pursuant to the Road Transport Act, a licence is required to operate a taxi or operate a passenger vehicle transportation business, which is defined as a service that gives rides in a car to others for consideration on demand. Therefore, ride sharing services cannot operate under the current legislation in Japan (though one ride sharing service limits its services to hailing of high-end licensed taxis with a professional chauffer). By the same token, a Chinese transportation network company recently launched a taxi booking service, instead of a ride sharing service, in Japan.

In 2015, one ride share application service provider started testing its service in Japan without the passenger paying the tariff to the driver. Instead, the driver received remuneration from the ride share company on the basis of a 'data provision fee'. Nevertheless, the MLIT requested that the service provider stop the tests on the basis that such a payment

still falls within the definition of 'consideration'. However, the MLIT also noted that the payment of a small amount that can be seen as a voluntary expression of gratitude or reimbursement of the actual expenses incurred, such as fuel, motorway and parking fees, will not be regarded as 'consideration' and is therefore acceptable. Some companies have launched this kind of matching app.

A car sharing service is feasible as a sort of rent-a-car service subject to the licence requirement under the Road Transport Act, and several rent-a-car companies have been operating car sharing services in urban areas making use of vacant parking lots. However, it is prohibited for individuals to hire out cars as a business. In addition, drop-offs in places other than registered parking spots are not permissible because the vehicle registration system (see question 2) requires the specification of a 'primary place of use' where the vehicle is usually parked.

However, in contrast with the above, the government has been promoting various 'sharing economy' policies and designated a rural town in Kyoto prefecture as a national strategic special zone to experiment with deregulation. The first ride-sharing service operating without a taxi licence was launched in May 2016.

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ISBN 978-1-83862-127-8